

## Louisiana Law Review

---

Volume 27 | Number 3

*The Work of the Louisiana Appellate Courts for the  
1965-1966 Term: A Symposium  
April 1967*

---

# Procedure: Civil Procedure

Donald J. Tate

---

### Repository Citation

Donald J. Tate, *Procedure: Civil Procedure*, 27 La. L. Rev. (1967)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol27/iss3/19>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

## PROCEDURE

### CIVIL PROCEDURE

*Donald J. Tate\**

Some 180 of the estimated 1,000<sup>1</sup> appellate decisions of the 1965-66 term dealt at least in part with questions of civil procedure. As part of the first coat of judicial gloss on the still new Code of Civil Procedure, nearly all have some immediate significance. Thus the following selection can doubtlessly be viewed as more than a little arbitrary. It must suffice to say of the remaining great bulk of these decisions that *en masse* they signify that the Code does indeed mean what it says and that the judiciary is not at all disposed to seize upon a word here and a phrase there to achieve some purpose alien to its underlying structure and philosophy. This attitude bespeaks a respect for the redactors' work which ranks among the finer tributes to the memory of the late Professor Henry George McMahon, whose contributions to these pages the writer is under no illusion of being able to replace.

### JURISDICTION

In *Fidelity Credit Co. v. Bradford*,<sup>2</sup> the Third Circuit held that our state courts had no "jurisdiction over the person" of a foreign corporation which had neither agent nor office here but shipped appliances to Louisiana retailers for uncontrolled resale. The action against it for damages arose from a consumer purchase and appliance defect but was not the usual "products liability" claim. The principal relief sought was rescission of the sale and the cost of repairing the installation site. Otherwise, our statute aimed at foreign manufacturers whose products cause injury here would almost certainly have been applied to the opposite result.<sup>3</sup> Viewed this way, the decision is question-

---

\*Associate Professor of Law, Louisiana State University.

1. See JUDICIAL COUNCIL OF THE SUPREME COURT OF LOUISIANA, ANNUAL REPORT, Tables I and IV (1965).

2. 177 So. 2d 635 (La. App. 3d Cir. 1965), *writs refused*, 248 La. 430, 179 So. 2d 273 (1965).

3. LA. R.S. 13:3201 (1964): "A court may exercise personal jurisdiction over a non-resident . . . as to a cause of action arising from the non-resident's . . . causing injury or damage in this state by an offense or quasi-offense committed through an act or omission outside of this state if he . . . derives substantial

able, for the constitutional question should hardly turn on such a distinction and, without the distinction, one must conclude either that the legislature failed in its attempt to exhaust the constitutional power potential in this area<sup>4</sup> or, in products liability cases, exceeded it.

In *Eden v. Johnson*,<sup>5</sup> the Second Circuit Court treated the statute<sup>6</sup> authorizing constructive seizure of immovables by appropriate recordation of notice of seizure as not merely authorizing but requiring that procedure in a seizure of an heir's interest in a succession having several heirs. The heir's interest was "insusceptible . . . of actual seizure and possession"<sup>7</sup> and the non-complying nonresident attachment was dissolved. Before constructive seizure by recordation was authorized outside the parishes of Orleans and Jefferson, the then Second Circuit Court had upheld a nonresident attachment of much the same kind as that here dissolved.<sup>8</sup> The late Professor McMahon viewed the new procedure as an "additional mode of seizure to an actual seizure,"<sup>9</sup> however, and if the categories of "actual seizure" and "constructive seizure (in the sense of the statute)" are exhaustive, the procedure is indeed mandatory "whenever a party . . . desires to have the sheriff . . . make a constructive seizure of immovable property."<sup>10</sup>

### VENUE

The principle that one must usually be sued at his domicile is deeply embedded in our law.<sup>11</sup> In workmen's compensation litigation, however, venue at plaintiff's domicile<sup>12</sup> has gradually been accepted. This reversal of tradition is probably traceable to considerations of the convenience and resources of the typical parties to such suits in a highly mobile population. Those who,

revenue from goods used or consumed . . . in this state." But see Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350, 398, 407 (1966).

4. See *Comments of Louisiana State Law Institute—1964* under LA. R.S. ANN. 13:3201 (Supp. 1964).

5. 176 So. 2d 476 (La. App. 2d Cir. 1965).

6. LA. R.S. 13:3851-3861 (Supp. 1960).

7. 176 So. 2d 476, 478 (La. App. 2d Cir. 1965).

8. *First Nat'l Bank & Trust Co. v. Drexler*, 171 So. 151 (La. App. 2d Cir. 1936).

9. McMahon, *Explanatory Note to LSA-R.S. 13:3851 through 13:3861*, 7 LA. R.S. ANN. 47 (Supp. 1966).

10. LA. R.S. 13:3851 (Supp. 1960).

11. LA. CODE OF CIVIL PROCEDURE art. 42 (1960); La. Code of Practice art. 162 (1870).

12. LA. R.S. 23:1312, 1313, 1271 (1950); but see LA. R.S. 23:1311 (1950) (employer-defendant).

for similar reasons, hope for a similar turn in all personal injury litigation should now look beyond article 74 of the Code, permitting suit "in the parish where the damages were sustained." In *Corsey v. White*,<sup>13</sup> the Fourth Circuit Court held that one who suffers mental anguish, loss of reputation, and damage to his credit standing in one parish through a wrongful seizure of his property in another may not sue in the former as "the parish where the damages were sustained." The case is noted elsewhere.<sup>14</sup> Although carefully confined to the facts presented, the opinion is certainly a straw in the wind. But the hopes pinned on article 74 were probably foredoomed anyway — a literal interpretation would allow too much, as the court noted, convincingly.

### ACTIONS

*Dickson v. Sandefur*<sup>15</sup> is destined to become standard fare in the law schools, a classic introduction to Cumulation of Actions and Joinder of Parties. The Red River cut a new channel through plaintiff's property, leaving him its abandoned bed "by way of indemnification."<sup>16</sup> Plaintiff's eighteen possessory actions for eighteen possessory disturbances against the eighteen owners of eighteen separate tracts fronting on the old channel were instituted in one suit. The trial court sustained exceptions of improper joinder of parties and improper cumulation of actions. The Second Circuit Court reversed. Its opinion leaves nothing to be desired as the jurisprudential capstone to the long struggle for clarity on this subject, beginning with *Gill v. City of Lake Charles*<sup>17</sup> in 1907 and culminating in the articles 461-465. Of the "community of interest" required for the cumulation, the court observed that "each defendant has a common interest in the judicial settlement of the questions raised herein affecting either the claims by plaintiffs or with respect to his own property rights."<sup>18</sup> Should any defendant convert the possessory action against him to a petitory action by him, "the court is authorized under Article 465 to segregate and to try the converted action separately."<sup>19</sup> It seems simple now.

---

13. 184 So.2d 625 (La. App. 4th Cir. 1966).

14. Note, 27 LA. L. REV. 76 (1966).

15. 181 So.2d 75 (La. App. 2d Cir. 1965), *writs refused*, 248 La. 906, 182 So.2d 660 (1966).

16. LA. CIVIL CODE art. 518 (1870).

17. 119 La. 17, 43 So. 897 (1907). See also *Preliminary Statement*, ch. 2, tit. 2, bk. 1, LA. CODE OF CIVIL PROCEDURE (1960).

18. 181 So.2d 75, 78-79 (La. App. 2d Cir. 1965).

19. *Id.* at 79.

Relief beyond the prayer is authorized by article 862.<sup>20</sup> In the last term the courts granted relief outside the parties' express demands, in quasi-contract for unauthorized repairs in one case,<sup>21</sup> and by way of declaratory judgment in an action for a monied judgment in another.<sup>22</sup> Admirable as this procedural liberality may be, there remain in other contexts the interesting theoretical problems of reconciling article 862 with article 425 on splitting the cause of action by demanding only "a portion of the obligation,"<sup>23</sup> article 861 on specific alleging of "special damage,"<sup>24</sup> and Civil Code article 2286, on *res judicata*.<sup>25</sup>

### SERVICE OF PLEADINGS

*Normand Co. v. Abraham*<sup>26</sup> may hold that a contradictory motion cannot be served under article 1313,<sup>27</sup> typically by mail on counsel, but must be served by the sheriff under article 1314.<sup>28</sup> If so, it seems wrong and full of mischief. Involved was a motion for summary judgment, which need not be but was cast in the form of a rule to show cause.<sup>29</sup> Thus it literally required an appearance, article 1313 was inapplicable, and article 1314 came into play. But the Fourth Circuit Court went further, clearly implying that, even if not so cast, article 1313 was inapplicable for the doubtful reason that the motion was by nature contradictory and required a hearing eventually.<sup>30</sup> Such a rule would be unfortunate, first, because it would require much expense for unneeded official service, and, second, because its facile administration would require a more certain distinction between *ex parte*

20. "[A] final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings . . ."

21. *Brooks v. Britnell*, 183 So. 2d 434 (La. App. 2d Cir. 1966).

22. *Gibbs v. Giering*, 183 So. 2d 459 (La. App. 3d Cir. 1966).

23. "An obligee cannot divide an obligation for the purpose of bringing separate actions on different portions thereof. If he brings an action to enforce only a portion of the obligation, and does not demand the enforcement of the full obligation, he shall lose his right to enforce the remaining portion."

24. "When items of special damage are claimed, they shall be specifically alleged."

25. "The thing demanded must be the same . . ." Compare *Brooks v. Britnell*, 183 So. 2d 434 (La. App. 2d Cir. 1966) and *Hayes v. Muller*, 248 La. 934, 183 So. 2d 310 (1966).

26. 176 So. 2d 178 (La. App. 4th Cir. 1965).

27. "A pleading which requires no appearance or answer . . . may be served by . . . mailing a copy thereof to the adverse party . . . or to his counsel of record . . ."

28. "A pleading which is required to be served, but which may not be mailed or delivered under Article 1313, shall be served by the sheriff . . ."

29. See LA. CODE OF CIVIL PROCEDURE art. 963, comment (b) (1960).

30. 176 So. 2d 181 (La. App. 4th Cir. 1965).

and contradictory motions than the Code or the jurisprudence provides.<sup>31</sup> If the decision means merely that all rules to show cause must be served by the sheriff, it is a correct and important reminder to the practice that frugality dictates avoidance of that optional form of motion. It should mean no more.

### PLEADINGS

Several decisions of the term suggest a need for eventual improvement of the means of presenting defenses in our procedure. In *Venterella v. Pace*,<sup>32</sup> the use of motions for summary judgment for peremptory exceptions of prescription called for nothing but gentle reproof of the pleaders. In *Public Fin. Corp. v. Vice*,<sup>33</sup> the use of the peremptory exception of no right of action for the affirmative defense of discharge in bankruptcy was held improper. In *Gebbia v. New Orleans*,<sup>34</sup> the use of the peremptory exception of no right of action for the dilatory exception to the procedural capacity of a wife asserting a community right was approved and then condemned, ultimately requiring an overruling of prior decisions. In a system codifying the principle that "rules of procedure implement the substantive law and are not an end in themselves,"<sup>35</sup> it seems unfortunate that the resources of the judiciary must be spent on such matters. Pride in the 1960 procedural revision should not prevent a candid discussion of the problem such needless effort suggests.

The code definitions of the declinatory, dilatory, and peremptory exceptions, carried over from the 1870 code, are not precise. The distinctions attempted between retarding, dismissing, and defeating an action — and between declining jurisdiction, retarding the action's progress, and having the action declared legally non-existent or barred by effect of law — refer in part to unfamiliar and ill-defined effects of judgments sustaining exceptions.<sup>36</sup> Moreover, the illustrations given of each exception, while helpful, are sometimes incompatible with the definitions; for example, the question of venue is not one of jurisdiction<sup>37</sup>

---

31. LA. CODE OF CIVIL PROCEDURE art. 963 (1960).

32. 180 So. 2d 240 (La. App. 4th Cir. 1965), *writs refused*, 248 La. 796, 182 So. 2d 73 (1966).

33. 177 So. 2d 315 (La. App. 1st Cir. 1965).

34. 181 So. 2d 292 (La. App. 4th Cir. 1965), *reversed*, 249 La. 409, 187 So. 2d 423 (1966).

35. LA. CODE OF CIVIL PROCEDURE art. 5051 (1960).

36. *Id.* art. 921, 923.

37. *Id.* art. 925.

and that of non-joinder, not one of defeating the action or declaring it barred and non-existent.<sup>38</sup> Furthermore, certain objections can be presented through two exceptions (prematurity),<sup>39</sup> others either by exception or by affirmative defense or reconventional demand in the answer (compromise as *res judicata*, compensation),<sup>40</sup> and most through the motion for summary judgment,<sup>41</sup> questions of evidence aside. The well-established principle<sup>42</sup> that the averments and evident purpose of the pleading, not its required designation,<sup>43</sup> determines its character, solves many of the problems thus created, but not all of them.

The danger of waiver or "stage-preclusion"<sup>44</sup> of an objection presentable only through the dilatory or declinatory exception; the risk of much wasted motion in treating the peremptory exception as the proper vehicle for a defense presentable only in the answer by way of affirmative defense; and the difficulty of fitting the omni-competent<sup>45</sup> motion for summary judgment into the exception system — all create an unfortunate need to smear several pleadings on the record to make sure that a single defense has been properly pleaded. In the famous *Harvey* case,<sup>46</sup> for example (holding a release of one tortfeasor with reservation of rights against another to absolve the latter of liability for the other's virile share), the released third-party defendant quite prudently saw fit to file an exception of no cause of action, a "plea" of *res judicata*, a "plea" of compromise, and a motion for summary judgment to present his single defense. Apparently the latter would have sufficed, but so apparently would have an exception of no right of action — or the affirmative defense of "extinguishment of the obligation."<sup>47</sup>

---

38. *Id.* art. 927.

39. See LA. CODE OF CIVIL PROCEDURE art. 423, comment (b) (1960).

40. See LA. CODE OF CIVIL PROCEDURE art. 1005, comment (b) (1960) (compensation); *Bowden v. State Farm Mutual Automobile Ins. Co.*, 150 So.2d 655 (La. App. 3d Cir. 1963) (transaction or compromise as *res judicata*).

41. The motion for summary judgment permits either party to seek "all or part of the relief for which he has prayed," seemingly without restriction. LA. CODE OF CIVIL PROCEDURE art. 966 (1960). *But see* text at note 30 *supra*.

42. *Succession of Smith*, 247 La. 921, 175 So.2d 269 (1965).

43. "Every pleading shall contain . . . a designation of the pleading." LA. CODE OF CIVIL PROCEDURE art. 853 (1960).

44. A highly sophisticated approach and terminology appears in MILLAR, *THE FORMATIVE PRINCIPLES OF CIVIL PROCEDURE, A HISTORY OF CONTINENTAL CIVIL PROCEDURE* (Continental Legal History Series, Millar transl. 1927) ("sequence," "stage-preclusion," and "contingent cumulation").

45. See note 41 *supra*. *But see Venterella v. Pace*, 180 So.2d 240 (La. App. 4th Cir. 1965), *writs refused*, 248 La. 796, 182 So.2d 73 (1966).

46. *Harvey v. Travelers Ins. Co.*, 163 So.2d 915 (La. App. 3d Cir. 1964).

47. LA. CODE OF CIVIL PROCEDURE arts. 927, 1005 (1960).

The Federal Rules of Civil Procedure<sup>48</sup> provide an interesting contrast. Essentially, all defenses and objections may be presented in the answer in that system, with wide judicial discretion for the separate and preliminary trial of any issue. This achieves the evident purpose of our system's creation of special procedural vessels for various defenses, the avoidance of full-scale trial of actions determinable on conveniently severable issues. The federal system also relegates to judicial discretion the problem we approach conceptualistically, the danger that the exception will be used beyond its purpose — to try fault on an exception to venue laid where the offense occurred;<sup>49</sup> or concurring fault on the same exception to venue laid properly as to one joint obligor;<sup>50</sup> or ownership on an exception to want of interest in a petitory action.<sup>51</sup> The federal system permits a preliminary assertion of a few enumerated defenses by motion, of course, but generally allows but one such sally, without however preventing the resurrection by answer of omitted defenses waived by the filing of that motion, except understandably in matters of venue, personal jurisdiction, and process. Our system of defense-pleading seems somewhat pretentious by comparison. Take, for example, our use of two exceptions — the declinatory and dilatory — which must be filed at the same time, tried under the same allowances for evidence, and maintained with the same uncertain effect,<sup>52</sup> when one would do quite nicely.

Thus, while the 1960 revision spared the plaintiff any further concern about "theory of the case" in pleading,<sup>53</sup> it left defendant in a maze of exceptions, motions, and affirmative defenses whence he might escape only by mastering a hoary metaphysics which a vast jurisprudence alone can supply, and then none too clearly. Recognition of defendant's quandary should lead the courts, pending improbable legislative action, to ignore pleading designations ever more freely, allow ever more defenses to come either by way of exception or answer, and permit the motion for summary judgment to serve the purpose of ever more exceptions, even to the extent of liberalizing the evidentiary limitations of that motion, with a view simply to:

---

48. FED. R. CIV. P. 12, 42; 1A BARRON AND HOLTZOFF, *FEDERAL PRACTICE AND PROCEDURE* § 370 (Wright ed. 1960).

49. LA. CODE OF CIVIL PROCEDURE art. 74 (1960).

50. *Id.* art. 73.

51. *Wischer v. Madison Realty Co.*, 231 La. 704, 92 So.2d 589 (1957).

52. LA. CODE OF CIVIL PROCEDURE arts. 928, 930, 932, 933 (1960).

53. See LA. CODE OF CIVIL PROCEDURE art. 862, comment(b) (1960).



- (1) Facilitating the disposition of cases on conveniently severable issues without full-scale trial;
- (2) Assuring plaintiff's counsel of fair notice of the way defendant intends to support the defense on the facts; and
- (3) In matters of personal jurisdiction, venue, and process, favoring waiver by stage preclusion on the fringes of the case, in recognition that one court is probably as good as another.

Perhaps this is the prevailing attitude. But then why bother, as in *Gebbia*,<sup>54</sup> to overrule well-established decisions that the wife has no interest or right of action to sue unaided for the community, to hold instead that procedural capacity is what she lacks? If that question deserved reexamination, the whole pot of defense-vehicles is likely to continue boiling.

#### DISCOVERY

In 1962, the Supreme Court provided a workable solution to the problem of obtaining information from the opponent's expert without offending article 1452, which requires a showing of great need for reaching his case-oriented writings and denies access altogether to the parts of those writings reflecting his "mental impressions, conclusions, opinions, or theories." The court held that the expert could be required to testify by deposition and "to bring with him his . . . memoranda which will remain in his possession and under his control and will be used only to refresh his memory so that he may answer questions in regard to the facts."<sup>55</sup> In *Barnett v. Barnett Enterprises*,<sup>56</sup> the Fourth Circuit Court refused to follow this solution outside the field of expropriation in which it arose. Both production and interrogation are prohibited by article 1452, the court held. The dissenter's broader view of the Supreme Court's 1962 approach seems correct.

*Mangrum v. Powell*<sup>57</sup> was also an article 1452 case, holding that defendant cannot compel production of the medical reports

54. *Gebbia v. New Orleans*, 181 So. 2d 292 (La. App. 4th Cir. 1965), *reversed*, 249 La. 409, 187 So. 2d 423 (1966).

55. *La. Dep't of Highways v. Spruell*, 243 La. 202, 214, 142 So. 2d 396, 400 (1962).

56. 182 So. 2d 728 (La. App. 4th Cir. 1966).

57. 181 So. 2d 400 (La. App. 2d Cir. 1965).

of plaintiff's experts, "as it is difficult to conceive of a medical report with respect to a patient's condition without containing an expression of the doctor's opinion."<sup>58</sup> Articles 1492-1495, concerning exchanges of medical reports where parties are physically examined by order under those provisions, were not involved. The decision is also of interest to the practice in holding that answers to interrogatories addressed to a corporation can be signed by the attorney upon whom they are served.

### TRIAL

*Cheramie v. Louisiana Power & Light Co.*<sup>59</sup> held that defendant's motion for summary judgment, filed before jury trial and "referred to the merits," could not perform the office of the motion for directed verdict, "which is not in our law." The trial court had granted the motion after the evidence but before submission of the case to the jury. The court of appeal explained forcefully that "the motion is a procedural device that is to avoid trial when there is no material issue of fact. The whole concept and purpose of summary judgment is defeated when the motion is referred to the merits of the case. This is exactly what the motion is designed to avoid."<sup>60</sup>

There remains the motion for judgment on the pleadings<sup>61</sup> to be tried as a substitute for the motion for directed verdict in our jury trial procedure. The exception of no cause of action has already been tried.<sup>62</sup> Although the motion for judgment on the pleadings is confined to the sufficiency of the pleadings, it is well settled in the case of the exception of no cause of action, similarly confined, that the evidence may be considered as an enlargement of the pleadings.<sup>63</sup> Perhaps the same reasoning can be applied to the motion for judgment on the pleadings. This approach to conforming our jury trial procedure jurisprudentially to that of our sister jurisdictions offers the advantage over the motion for summary judgment that the delays for hearings on the motion for judgment on the pleadings are more malleable

---

58. *Id.* at 402.

59. 176 So.2d 209 (La. App. 4th Cir. 1965).

60. *Id.* at 212.

61. "Any party may move for judgment on the pleadings . . ." LA. CODE OF CIVIL PROCEDURE art. 965 (1960).

62. *Bartholomew v. Impastato*, 12 So.2d 700 (La. App. Orl. Cir. 1943); see *Kline v. Dawson*, 230 La. 901, 89 So.2d 385 (1956); *Williams v. Missouri Pac. R.R.*, 6 So.2d 79 (La. App. 2d Cir. 1941); and *Young v. Thompson*, 189 So. 487 (La. App. 1st Cir. 1939).

63. See *Barr v. Freeman*, 175 So.2d 649 (La. App. 1st Cir. 1965).

and the evidence as a whole may be considered, as suggested. On the other hand, as the court here points out, perhaps "if the concept of a motion for a directed verdict is needed in our law, this is a problem which addresses itself to the legislature."<sup>64</sup> It would seem better on the whole to do without that device and let the jury-tried case reach the court of appeal as a completed whole, and thus to avoid appeals of partially tried cases and occasional remands to let the parties start all over again.

### APPEALS

Our system of incidental demands and cumulation of actions admits many combinations of demands, cross-demands, and conditional demands which pose thorny problems of appellate procedure. These problems have not received the systematic treatment against which new developments might be viewed in proper perspective. Notable among such developments have been decisions on the scope of review in joint-tortfeasor cases<sup>65</sup> under the answer to the appeal, which restricts appellate relief thus sought to relief against appealing parties and ordinarily provides no relief against other appellees.<sup>66</sup> Two decisions of the last term suggest a new dimension of difficulty, the question whether or not a judgment silent on an alternative or third-party demand is an adjudication of that demand at all, permitting appellate review of that aspect of it. Although distinguishable by jurisprudential standards, the decisions seem inconsistent in theory, one from the First Circuit holding silence to be adjudication,<sup>67</sup> and the other from the Supreme Court treating it as a reservation of judgment requiring remand for adjudication of that issue.<sup>68</sup>

For the time being, the only safe rule in multi-party cases is "appeal." The appeal brings everything before the appellate court that can be brought (aside from its "writ" jurisdiction).<sup>69</sup> The less versatile answer to the appeal has been deprived by recent legislation<sup>70</sup> of its principal utility, as the only means of de-

64. 176 So.2d 209, 213 (La. App. 4th Cir. 1965).

65. *E.g.*, *Vidrine v. Simoneaux*, 145 So.2d 400 (La. App. 3d Cir. 1962); *Emmons v. Agricultural Ins. Co.*, 245 La. 411, 158 So.2d 594 (1963), *reversing* 150 So.2d 594 (La. App. 4th Cir. 1963); *Fussell v. United States F. & G.*, 153 So.2d 911 (La. App. 1st Cir. 1963).

66. See LA. CODE OF CIVIL PROCEDURE art. 2087, comment(c) (1962).

67. *Breaux v. Texas and Pac. R.R.*, 176 So.2d 640 (La. App. 1st Cir. 1965), *writs refused*, 248 La. 375, 178 So.2d 660 (1965), *motion to remand denied*, 182 So.2d 552 (La. App. 1st Cir. 1966).

68. *McCoy v. Pacific Coast Fire Ins. Co.*, 248 La. 289, 178 So.2d 761 (1965).

69. *Breaux v. Laird*, 230 La. 221, 88 So.2d 33 (1956).

70. LA. CODE OF CIVIL PROCEDURE art. 2087 (1962).

fense against an unexpected last minute appeal by another. The appellee now has ten additional days from the first appeal to appeal himself. Future developments will thus arise, not from imperfections of appellate procedure, but from litigants' oversights.

### EXECUTORY PROCESS

The reports are replete with evidence of unsuccessful attempts to avoid the Deficiency Judgment Act,<sup>71</sup> requiring appraisalment in the sale under executory process as a condition to obtaining a judgment for the unsatisfied portion of the seizing creditor's claim. The construction of the act has been liberal in every sense of the word. *Bickham Motors, Inc. v. Crain*<sup>72</sup> is in that tradition. In a deficiency judgment action, the First Circuit court held that "the seizing creditor appointed keeper who fails to discharge the duty of protection and preservation incumbent upon him to the extent of the value of the movables in his charge deteriorates almost to the vanishing point, must be held in the same position as if the sale were provoked without benefit of appraisalment."<sup>73</sup>

### MISCELLANEOUS

In *Luquette v. Bouillion*,<sup>74</sup> the question presented by counsel's unsuccessful attempt to present the deposition of a witness to the jury by sound motion-picture film was left open. In the writer's experience, trial courts have permitted counsel to photograph for the record a witness's placement of model vehicles on a map of the scene of the accident, and the appellate court has retired to a projection room to view moving pictures of a workmen's compensation claimant suspiciously hard at work. Such not-so-futuristic tactics suggest that the appellate court of tomorrow may have no time to review the facts, unless it refuses to look at them.

---

71. LA. R.S. 13:4106 (1950).

72. 185 So.2d 271 (La. App. 1st Cir. 1966).

73. *Id.* at 277.

74. 184 So.2d 766 (La. App. 3d Cir. 1966).